

CHILDREN AND FAMILIES

DIVISION OF CHILD PROTECTION AND PERMANENCY

Client Information

Proposed Readoption with Amendments: N.J.A.C. 10:133G

Proposed Recodifications with Reproposed Amendments: N.J.A.C. 10:133G-3.5, 4.2, 4.3, 4.4, 4.5, 4.6, and 4.7 as 2.6, 3.2, 3.4, 3.5, 3.6, 3.7, and 3.9, respectively, and 5.1 and 5.3 as 2.7

Proposed Recodifications with Amendments: N.J.A.C. 10:133G-3.4 as 2.8

Proposed New Rule: N.J.A.C. 10:133G-3.8

Proposed Repeals: N.J.A.C. 10:133G-3.1, 3.2, 3.3, and 5.2

Authorized By: Allison Blake, Ph.D, L.S.W, Commissioner, Department of Children and Families.

Authority: N.J.S.A. 9:6-8.14, 9:6-8.10a, 30:4-24.3, and 30:4C-4(h); and 45 CFR 205.50, 1355.21, and 1355.30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-098.

Submit written comments by September 5, 2014, to:

Pamela Wentworth

Office of Policy and Regulatory Development

Department of Children and Families

PO Box 717

Trenton, New Jersey 08625

Summary

Pursuant to N.J.S.A. 52:14B-5.1.b, N.J.A.C. 10:133G will expire on May 21, 2014. As the Department of Children and Families (Department) has filed this notice of proposal with the Office of Administrative Law on or before that date, the expiration date is extended 180 days to November 17, 2014 pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978).

The Department is proposing to readopt this chapter, which governs the disclosure of client information by the Division of Child Protection and Permanency (“Division” or “DCPP”), with amendments, repeals, new rules, and recodifications. Substantive amendments to this chapter were previously proposed on April 15, 2013, at 45 N.J.R 838(a) (2013 Proposal); those amendments were not adopted, but were modified in response to public comments received, and are repropose here in the proposed amendments to recodified Subchapter 3 (Subchapter 4 in 2013 Proposal).

The purpose of the amendments included in this notice are as follows:

1. To better organize, clarify, and consolidate rules that were determined to be redundant or unclear.
2. To comport with Federal guidance on the release of information on fatalities and near fatalities resultant from child abuse or neglect.

3. To the greatest extent possible, to strike an appropriate balance between the need for public transparency and the privacy interests of the Division's clients.

In the existing chapter, rules governing the disclosure of information are spread over four subchapters: Subchapter 2 governing the release of information to clients, Subchapter 3 governing the release of information to persons other than clients, Subchapter 4 governing requirements specifically applicable to the release of information to the media and public on child abuse or neglect-related fatalities and near fatalities, and Subchapter 5 governing the disclosure of information to other government entities. The Department believes that the organization of the chapter would be improved by consolidating these subchapters into a single subchapter, and eliminating redundant provisions. This will allow for a unified presentation of the rules applicable to disclosures of information, regardless of the recipient. Accordingly, the Department is proposing to amend the name of Subchapter 2 from "Disclosure of Client Information to a Client" to simply "Disclosure of Client Information." Subchapter 4, which deals with very specific circumstances and is largely controlled by Federal law and guidance, would not be impacted by this reorganization in any substantive way, but would be recodified as Subchapter 3.

Throughout the chapter, the Department is proposing to amend references to "Division representative" to the Division itself (deleting the word "representative"). The authorities and obligations dealt with pertain to the Division as an organizational actor rather than to the conduct of any individual representative or employee.

The Department also proposes to amend the names of two Department of Children and Families' Offices as they appear in N.J.A.C. 10:133G. The proposed amendment will replace the "Office of Legal and Regulatory Affairs" with the "Office of Legal Affairs" and will replace the

“Office of Public Information” with the “Office of Communications.” The proposed amendments reflect the current names of these Offices.

The Department proposes to amend all references to “the Division of Youth and Family Services” throughout the chapter, to replace the references with “the Division of Child Protection and Permanency,” as it is the agency’s new name. The proposed amendment comes under the authority of N.J.S.A. 9:3A-10, which reflects that “the Division of Child Protection and Permanency” replaces “the Division of Youth and Family Services,” as amended in 2012.

At N.J.A.C. 10:133G-2.1(a), (d), and (e) and 2.3(a), to consolidate redundant material into a single section, the Department is proposing to expand the specified limitations on the release of third-party information to not just “current or former clients” but “to any person, including clients, former clients, parents or guardians of current or former clients, and third parties.”

The Department proposes to amend N.J.A.C. 10:133G-2.1(b) to make clear that all forms of permissive disclosure are limited to situations in which the disclosure is not likely to endanger the life or safety of reporters or other persons, or discharge or discrimination in employment. To accomplish this, the Department is merging existing paragraphs (b)1 and 2 and recodifying existing paragraph (b)3 as (b)2 with amendments to include the information discussed above. A distinction is drawn in proposed new N.J.A.C. 10:133G-2.1(b)3 for disclosures required by statute or court rule, which cannot be limited by an agency determination that the disclosure will endanger a reporter or other person.

To consolidate previously redundant material into a single section, the Department is proposing to relocate existing N.J.A.C. 10:133G-3.1(a) and (b) to 2.1(d) and (e). This allows for a single section to cover all material on the disclosure of child protective service information.

The new subsections are proposed for amendment to state that it is the Division that notifies the local law enforcement, not the Department.

At N.J.A.C. 10:133G-2.3(a), again to consolidate redundant material into a single section, the Department is proposing to expand the specified limitations on the release of third-party information to not just “current or former clients” but “to any person, including clients, former clients, parents or guardians of current or former clients, and third parties.”

The Department is proposing to eliminate the list of statutes that might limit disclosure from N.J.A.C. 10:133G-2.3(a)1. The concept of law that restricts disclosure does not require illustration, and the non-exhaustive list is otherwise superfluous.

The Department is proposing to modify the restriction on the release of “information about another person” in N.J.A.C. 10:133G-2.3(a)3 to apply to “unredacted, confidential information” about another person. Virtually all records will include information on more than one person, though the privacy interests of those other persons are only implicated to the extent that they are identifiable and the information is confidential.

In order to consolidate previously redundant material, the Department proposes to relocate N.J.A.C. 10:133G-3.3(b) and (c) to new 2.3(b) and (c). At relocated paragraph (c)3, the Division has removed the examples as they are not necessary.

To better reflect the rule text, the Department is proposing to change the heading of N.J.A.C. 10:133G-2.4 from “Minor clients” to “Provision of information to minor clients” and the heading of N.J.A.C. 10:133G-2.5, from “Adult adoptees” to “Provision of information to adult adoptees.”

The Department proposes to further amend N.J.A.C. 10:133G-2.4 to reflect that parent or guardian consent may not be legally required for minor clients or former clients to access

information in the Division's case record. The illustrative examples in existing N.J.A.C. 10:133G-2.4(c) have been replaced with an objective standard specifying a minor's legal right to access the information in N.J.A.C. 10:133G-2.4(a)2. Departmental authority to forgo parent or guardian consent when the privacy interests of the child are otherwise implicated have been retained in a pared down version of N.J.A.C. 10:133G-2.4(c). The Department also proposes to remove language that previously restricted applicability of this section to "information not previously disclosed" to allow the same procedures and requirements to apply to all information covered by the subchapter when released to minor clients

Once more, to consolidate information on the release of information into a single Subchapter, the Department proposes to recodify N.J.A.C. 10:133G-3.5 on the sharing of information within the Division and with employees of the Department of Law and Public Safety, Division of Law as N.J.A.C. 10:133G-2.6. Existing paragraph (b)1 is proposed for deletion and is not recodified because the rules and procedures related to the sharing of information related to child fatalities and near fatalities is thoroughly covered in Subchapter 3, as amended, and the existing language is redundant. The Department proposes to amend recodified N.J.A.C. 10:133G-2.6(c) to allow for the sharing of information with both attorneys from the Department of Law and Public Safety, Division of Law and with other legal representatives retained by the Division.

To consolidate information on the disclosure of information, the Department is also proposing to relocate existing Subchapter 5 on release of information to government entities into a single section as new N.J.A.C. 10:133G-2.7. Existing N.J.A.C. 10:133G-5.3(a)1 is recodified as N.J.A.C. 10:133G-2.7(c)1, but is amended for clarity to read "that the requestor is legally permitted to receive." Existing N.J.A.C. 10:133G-5.2 is proposed for repeal because it is

redundant of requirements elsewhere in the chapter that a requestor's legal authority to receive information must be verified before it is provided. Where entities have authority to receive information more than a summary, as previously allowed, the Department has no reason to otherwise limit disclosure.

Because the procedures are generally applicable to all requests for information, the Department proposes to recodify existing N.J.A.C. 10:133G-3.4 as 2.8. Some provisions were clarified to avoid redundant determinations of appropriateness of releasing information.

Existing N.J.A.C. 10:133G-3.1, 3.2, and 3.3 are proposed for repeal as the substance of those sections is proposed for inclusion within Subchapter 2, as discussed above.

Existing Subchapter 4 is proposed for recodification with amendments as Subchapter 3. Existing N.J.A.C. 10:133G-4.2(b) and (c) are proposed for recodification as N.J.A.C. 10:133G-3.3(a) and (b). The proposed amendments to recodified Subchapter 3 are intended to meet the disclosure requirements as mandated by The Child Abuse Prevention and Treatment Act (CAPTA), at 42 U.S.C. § 5106a. CAPTA requires states to develop procedures allowing for the release of information about an abuse and neglect case that resulted in a child fatality or near fatality.

Proposed new N.J.A.C. 10:133G-3.4(a)⁷ excludes information obtained from "another agency or entity, which is investigating a child fatality or near fatality on its own or in cooperation with the Division" from the information to be disclosed to the public or media on a fatality or near fatality. This is substantively identical to the provisions at existing N.J.A.C. 10:133G-4.4(c), which is proposed for deletion. Releasable information may be obtained from the originating source, and DCF is obligated to safeguard its confidentiality. Rules regarding its

disclosure may have a chilling effect on the ability of DCF to obtain necessary investigative information.

Existing N.J.A.C. 10:133G-4.3(b) is proposed for deletion as that section provided that persons denied information may petition the Chancery Court for release of the information. This right is preserved at recodified N.J.A.C. 10:133G-2.7 and 3.9, and its inclusion here would be redundant.

The Division repropose amendments to recodified N.J.A.C. 10:133G-3.4(a)6 and 3.7(a)5 that were originally proposed in the 2013 Proposal. Those amendments would limit the release of information regarding the Division's involvement with a child victim and his or her family prior to a fatality or near fatality "to the extent [that information] is pertinent to the child abuse or neglect that led to the fatality or near fatality[.]" As explained in the 2013 Proposal, the amendment is intended to limit the disclosure of temporally remote or minor incidents that are insignificant to the child abuse or neglect that led to the fatality or near fatality.

These amendments are necessary to ensure the State's compliance with guidance in the U.S. Department of Health and Human Services' Child Welfare Policy Manual (CWPM). The CWPM makes clear at 2.1A.4 Q/A # 8 that only relevant information about the fatality or near fatality can be released to the public during or after an investigation. The Department is reproposing the amendments as they directly align with that standard.

In addition to CAPTA and the CWPM, the proposed amendments comply with Title IV-E of the Social Security Act. Pursuant to 42 CFR 1355.21(a), states are required to safeguard the disclosure of client information for clients served under Titles IV-E. However, the CAPTA provisions to disclose pertinent information to the public are mandatory and prevail over Title IV-E. Pursuant to the CWPM, "in the case of a child fatality or near fatality, the CAPTA

provision will prevail in the event of a conflict [with Title IV-E] since CAPTA confidentiality provisions were most recently enacted.” CWPM, Section 2.1A.1 Q/A # 6. Consequently, without penalty under Title IV-E, the Division is required to develop and maintain procedures for disclosure as set forth in CAPTA. The proposed amendments accomplish the goal of meeting the CAPTA’s statutory requirements without compromising compliance with Title IV-E.

Significant concerns on the two amendments to recodified N.J.A.C. 10:133G-3.5(a)6 and 3.7(a)5, were received during the public comment period following 2013 Proposal. The Office of the Law Guardian, Advocates for Children of New Jersey (ACNJ), and Court Appointed Special Advocates (CASA) each opined that the standard of pertinence proposed by the Department was too vague. The Office of the Law Guardian proposed a very specific framework and factors for determining the pertinence of information for release. Though the Department has declined to adopt that recommendation in its entirety, it has opted to propose a modified version of it in proposed new N.J.A.C. 10:133G-3.8.

The proposed new section is intended to provide clarifying guidance on the types of information subject to release under N.J.A.C. 10:133G-3.4(a)6 and 3.6(a)5. Per direction in Federal guidance, Child Welfare Policy Manual Q 2.1A.1 Q/A #8, those two paragraphs currently limit the public release of certain information related to child fatalities and near fatalities resultant from abuse or neglect to information that is pertinent to the acts of abuse or neglect that resulted in the fatality or near fatality; this new section would add standardized criteria for the Division’s determination of particular information’s pertinence for purposes of complying with N.J.A.C. 10:133G-3.4(a)6 and 3.6(a)6. The new section would stipulate that information is generally considered pertinent for the purposes of release under N.J.A.C. 10:133G-3.4(a)6 and 3.6(a)5, if the information pertains directly to the abuse or neglect that

resulted in a fatality or near fatality, pertains to prior acts of abuse or neglect that have a commonality of involved persons, pertains to a pattern of abuse that led to a fatality or near fatality, or would otherwise assist the public or media in understanding the Division's response to the acts of abuse that led to a fatality or near fatality. Further, subsection (b) of the new section clarifies that the release of the information must be permitted under law or elsewhere in this chapter to be released.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Division expects the rules proposed for readoption with amendments, repeals, new rules, and recodifications to have a positive social impact on some of the Divisions' most vulnerable children and families that are involved in sensitive matters of a child's death or serious injury. The reorganized chapter will more clearly communicate both privacy and access rights regarding client information retained by the Division.

The repropose amendments will limit access to public information to the media or a member of the public, as he or she seeks the disclosure of client information during or after an investigation. However, as required by Federal law, Division transparency and accountability to the public shall remain. The Division expects the media and general public to recognize the agency's obligation to comply with all Federal requirements as it applies to the disclosure of client information. Additionally, the Division expects the media and members of the public to appreciate the Division's continuous efforts to protect children and families identified by client information. Proposed new N.J.A.C. 10:133G-3.8 pertaining to methods for determining the

pertinence of information subject to release following a fatality or near fatality is a good faith effort on the Department's behalf to ensure continued transparency in its operations, while still complying with Federal guidance.

The Division expects no social impact on the Division, its clients, the media, or general public regarding the proposed amendment to modify the Division's name.

Economic Impact

The rules proposed for readoption with amendments, repeals, new rules, and recodifications have no economic impact on the Division's clients, Division employees, the media, or the general public.

Federal Standards Statement

The Child Abuse Prevention and Treatment Act (CAPTA), at 42 U.S.C. § 5106a, requires states to develop procedures allowing for the release of information about a case of child abuse and neglect that resulted in a child fatality or near fatality. The rules proposed for readoption with amendments, repeals, new rules, and recodifications do not violate or exceed CAPTA's requirements.

Pursuant to 42 U.S.C. § 671(a)(8) and 45 CFR 1355.21(a), states are required to safeguard the disclosure of client information for clients served under Title IV-E of the Social Security Act. The rules proposed for readoption with amendments, repeals, new rules, and recodifications do not violate or exceed this Federal mandate. The intent of the rules proposed for readoption with amendments, repeals, new rules, and recodifications, in fact, is to comply

with Federal guidance in the U.S. Department of Health and Human Services' Child Welfare Policy Manual (CWPM) at 2.1A.4 Q/A # 8.

Proposed new N.J.A.C. 10:133G-3.8 directly aligns with Federal law, neither violating nor exceeding those mandates. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Division anticipates no generation or loss of jobs as a result of the rules proposed for readoption with amendments, repeals, new rules, and recodifications.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals, new rules, and recodifications will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Neither the Division nor the Division's clients are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. A Division client is defined as any person receiving a service from the Division or any person referred to the Division for services at N.J.A.C. 10:133G-1.3. The media, while sometimes a small business, is not regulated by the rules proposed for readoption with amendments, repeals, new rules, and recodifications. Additionally, the rules proposed for readoption with amendments, repeals, new rules, and recodifications do not impose reporting, recordkeeping, or compliance requirements on small businesses, but describes the Division requirements for handling client information. Therefore, a regulatory flexibility analysis is not necessary.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, new rules, and recodifications have no impact on affordable housing in New Jersey. There is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing, as these rules only pertain to the disclosure of client information.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, new rules, and recodifications have no impact on smart growth in New Jersey. There is an extreme unlikelihood that these rules would evoke change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as rules proposed for readoption with amendments, repeals, new rules, and recodifications only pertain to the disclosure of client information.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:133G.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:133G-3.1, 3.2, 3.3, and 5.2.

Full text of the proposed amendments, new rules, and recodifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:133G-1.2 Scope

(a) The provisions of this chapter shall apply to the following persons:

1.-3. (No change.)

4. Each person to whom the Division [representative] discloses confidential client information;

5.-7. (No change.)

(b) (No change.)

SUBCHAPTER 2. DISCLOSURE OF CLIENT INFORMATION [TO A CLIENT]

10:133G-2.1 Protective service information

(a) [A] **The** Division [representative] shall **only** disclose [only such] protective service information to [the] **a client, former client,** parent, or legal guardian as [is authorized pursuant to] **permitted by** N.J.S.A. 9:6-8.10a[b.], **subject to limitations of this chapter.**

(b) [A] **The** Division [representative] shall not disclose, confirm, or deny the identity of a reporter, unless:

1. The reporter gives prior written consent[;] and [2. The] **the** disclosure is not likely to endanger the life or safety of the reporter or other person or result in the discharge of, or discrimination against, the reporter, with respect to his or her employment; [or]

[3.] **2.** Disclosure is permitted by statute or court rule[.] **and the disclosure is not likely to endanger the life or safety of the reporter or other person or result in the discharge of, or discrimination against, the reporter, with respect to his or her employment; or**

3. Disclosure is required by statute or court rule.

(c) [A] **The Division** [representative] shall not release the name or any other information identifying the person or entity who reported a child fatality or near fatality to the Division to the public or the media pursuant to N.J.S.A. 9:6-8.10a, whether or not the reporter gives prior written consent.

(d) (No change.)

(e) The Division shall disclose a client's protective service information to persons other than the client or the client's parent or guardian only as permitted by law, including N.J.S.A. 9:3-54.2 and 9:6-8.10a. The Division shall not permit any person to have unrestricted review of its records or general access to child protective information contained therein, except as otherwise provided by law or court order in accordance with N.J.S.A. 9:6-8.10a.b(6).

(f) The Division shall notify the police or local law enforcement authority of each substantiated incident of abuse or neglect involving a child who resides within their jurisdiction in accordance with N.J.A.C. 10:129-7.5(e) and (f).

10:133G-2.2 Child welfare information

(a) -(c) (No change.)

(d) [A] **The Division** [representative] shall disclose to a current or former client other child welfare information from the client's records to the extent that the client makes a reasonable demonstration of [the] **his or her** need to know. [In general, each] **The Division** [representative] shall consider the client's statement of the need for the information as [a] **such** reasonable demonstration, unless the Division [representative] has [a] compelling reason [not to disclose] to withhold the requested information, such as when the Division [representative] determines that

disclosure of such information would be likely to endanger any person's life or safety. The determination shall be based on the Division representative's and his or her supervisor's professional judgment or that of another professional who has evaluated the nature and seriousness of the case and an assessment of the client's propensity for violence and harm as based on the client's known past behavior and threats against himself, herself, or others. If the Division [representative] denies the disclosure of the child welfare information to the client, the Division [representative] shall:

1. -2. (No change.)

(e) (No change.)

(f) The Division shall disclose child welfare information to persons other than the client or his or her parent or guardian only with the client's prior consent, except in an emergency, in which case, the Division shall advise the client of the request and disclosure at a later time. With the client's consent or in an emergency, the Division shall disclose information about that client, subject to the limitations and provisions set forth in 45 CFR 205.50, 1355.21, and 1355.30, and only to a person or agency representative who is subject to standards of confidentiality comparable to those of the Division and only to a party who presents a need to know the information requested, for example, information needed to provide medical, psychological, or social services to the child or family, except when restricted by law or N.J.A.C. 10:133G-2.3(a)1. No person shall have unrestricted review of the case records or general access to the information contained therein, except as otherwise provided by statute or court rule.

10:133G-2.3 [Third party] **Third-party** information

(a) The Division [representative] shall not disclose any of the following to [a] **any person, including clients, former clients, parents or guardians of current or former clients, and third parties:**

1. Any third-party report, unless the Division [representative] receives prior written consent from the third party and release is not prohibited by law or regulation[.]; [The following statutory provisions restrict disclosure:

i. Juvenile-Family Crisis information in N.J.S.A. 2A:4A-60;

ii. Human Immunodeficiency Virus (HIV) information in N.J.S.A. 26:5C-5 et seq.;

iii. Drug and alcohol treatment records in 42 CFR 2.1 et seq.; and

iv. Domestic violence information in N.J.S.A. 30:14-1 et seq. and N.J.A.C. 10:130-2.8;]

2. Any record containing information identifying a third-party source of information, for example, reporter, other family member, **or** collateral contact, unless the Division [representative] receives prior written consent from the third party and disclosure is not prohibited by law or regulation;

3. [Information] **Unredacted, confidential information** about another person, except with the express written consent of the other person and when not prohibited by law or regulation; or

4. Information, which would, if disclosed to the client, be likely to endanger any person's life or safety as based on the client's known past behavior and threats against himself, herself, or others. The Division representative shall base the determination on the Division representative's

and his or her supervisor's evaluation of the nature and seriousness of the case and an assessment of the client's propensity for violence and harm to the child and others.

(b) When the Division seeks to use a third-party report to process a residential placement or other service, or apply for government benefits, the Division shall inform and obtain the consent of the third party at the time of request that the information may be disclosed to others to obtain a needed service or government benefit.

(c) The Division shall disclose third-party reports to an agency or person who is subject to standards of confidentiality comparable to those of the Division, such as a physician, psychotherapist, health agency, or mental health agency, when:

- 1. The Division has guardianship or custody of the child;**
- 2. Disclosure of the information is necessary for the child's or parent's care, treatment, or supervision;**
- 3. Disclosure is not prohibited by law or regulation;**
- 4. The Division has considered the risk of harm to the child and others; and**
- 5. The third party has given his or her consent, in accordance with (b) above.**

10:133G-2.4 [Minor] **Provision of information to minor clients**

(a) A current or former minor client may receive information contained in the Division's case record[, which has not been previously disclosed,] **as permitted by N.J.A.C. 10:133G 2.1, 2.2, and 2.3** through a request made by [the]:

- 1. The minor client's parent or guardian, except when the circumstances in (c) below apply[.]; or**

2. The current or former minor client having a legal right to access the information without parental consent, including minors permitted access pursuant to provisions of N.J.S.A. 9:17-1 et seq.

(b) When providing information to a minor client, the Division [representative] shall present that information in a manner determined by the Division [representative] to be consistent with and appropriate to the minor client's age or condition, to enable the minor client to understand the basis for the Division's involvement, the minor client's ability to cope with the information, and, for a current minor client, the minor client's ability to participate in the development, discussion, or implementation of the case plan pursuant to N.J.S.A. 9:6-8.10a.c. Information [which] **that** may be disclosed on behalf of a minor client is limited in the same manner as described in N.J.A.C. 10:133G-2.1 through [2.3] **2.8.** [(c) A] **The** Division [representative] may make an exception to the parental request requirement when[: 1. The information sought is not restricted by law, regulation, or policy; and 2. The] **the** requirement of parental involvement would interfere with the child's right to privacy (for example, a female child who has had a pregnancy or abortion of which her parent has no knowledge) [or interfere with other rights the child may have as a result of circumstances making him or her an emancipated minor].

10:133G-2.5 [Adult] Provision of information to adult adoptees

All court records and information relating to adoption proceedings are sealed upon the legal finalization of the adoption pursuant to N.J.S.A. 9:3-52. Since the Division's records contain sealed court records, [each] **the** Division [employee] shall treat these records as confidential. The Division [representative] shall disclose to an adult adoptee non-identifying information available in the Division's records in accordance with N.J.A.C. 10:121A-5.9(b)2.

The Division [representative] shall disclose identifying information to an adult adoptee about any birth family member or other person who has given his or her written consent to the Division.

10:133G-[3.5]2.6 Disclosure within the Division, the Department, the Department of Law and Public Safety, Division of Law, and the court

(a) [A] Division employees shall disclose personal client information [within the] **to other Division employees and to employees of the Division of Law within the Department of Law and Public Safety** only to [those persons who require such information in the course of their jobs and only to the extent necessary. Each] **the extent that such disclosure is necessary for the execution of those persons' official duties.** Division employees shall [obliterate or omit the names of] **redact** client[s and other persons when case] **information from any** record [materials or reports are] used for training.

(b) Staff of the Department's Office of Legal [and Regulatory] Affairs, the Commissioner or Chief of Staff of the Department of Children and Families or each Director of an office or Division of the Department of Children and Families shall have the authority to request and receive all information about Division clients.

[1. The Division representative shall advise a representative of the Department of Children and Families' Office of Public Information of each child fatality or near fatality, which the Division has reasonable cause to believe was the result of abuse or neglect. A representative from the Department of Children and Families' Office of Public Information or the Director shall release information to the public about child fatalities or near fatalities in accordance with N.J.A.C. 10:133G-4.]

(c) [A] **The Division** [employee] shall disclose **requested** client information to a Deputy Attorney General, Department of Law and Public Safety, Division of Law, **or any other attorney** representing the Division.

(d)-(f) (No change.)

10:133G-[5.1]2.7 [Request procedure] **Disclosure of information to other government entities**

(a) A Federal, State, or local government entity requesting information regarding an abuse or neglect report, when the information is being requested for a matter other than the investigation of a report of abuse or neglect, shall submit a written request to: Division of [Youth and Family Services] **Child Protection and Permanency**, PO Box 717, Trenton, NJ 08625-0717.

(b) The request shall include:

1. A citation identifying the requester's [statutory mandate to protect children from abuse and neglect] **legal authority to receive the information;**

2.-4. (No change.)

[10:133G-5.3 Safeguards]

[(a)] (c) The following safeguards are applicable when information is requested by a government entity. The [Director or designee] **Division** shall disclose only that information **that**:

[1. Deemed appropriate, as determined pursuant to N.J.A.C. 10:133G-5.2, for the requesting entity to carry out its responsibility under law to protect children from abuse or neglect;]

1. The requestor is legally permitted to receive;

2. [Related to an abuse or neglect report which would] **Is** not [be] likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person;

3. [Related to an abuse or neglect report which would] **Is** not [be] likely to compromise the integrity of a child protection investigation or a civil or criminal investigation or judicial proceeding;

4. [Related to an abuse or neglect report, which is] **Is** not deemed confidential by Federal or State law other than N.J.S.A. 9:6-8.10a;

5. [Which does] **Does** not contain the name of the reporter or any other information which could readily identify the reporter, unless the reporter gives prior written consent in accordance with N.J.A.C. 10:133G-2.1(c); and

6. [Which does] **Does** not contain the name of or any information which could readily identify the Division representative or representatives assigned to the child protection investigation or the management of an open case.

[(b)] **(d)** (No change in text.

10:133G-[3.4]**2.8** Requests for information

(a) Each person making an inquiry or request for client information shall put the request in writing, except as allowed in (d)[,] below. **The following procedures shall be observed:**

1. -3. (No change.)

(b) [A] **The** Division [representative] shall determine whether the person requesting the information can receive the information pursuant to statute and to the provisions of this chapter.

(c) [No] **The** Division [employee] shall **not** disclose client information over the telephone, including whether or not a person is or was known to the Division, except as authorized in [(a) above or] (d) below.

(d) When information is urgently needed, the Division [representative] shall disclose the information after verifying the caller's identity, determining that the caller is authorized to receive the information pursuant to N.J.S.A. 9:6-8.10a [or in accordance with N.J.A.C. 10:133G-3.2], and determining that the caller has made a reasonable demonstration of the need to know the information and in consideration of the risk of harm to the child and others.

SUBCHAPTER [4.] **3. DISCLOSURE OF INFORMATION TO THE MEDIA AND PUBLIC ABOUT A CHILD FATALITY OR NEAR FATALITY**

10:133G-[4.1]**3.1** (No change in text.)

10:133G-[4.2]**3.2** Who may disclose information to the media or a member of the public about a child fatality or near fatality

(a) The Department of Children and Families' Office of [Public Information] **Communications** shall direct and control the release of information to the media about a child fatality or near fatality investigated by the Division or determined by the Division to be the result of abuse or neglect. Information shall be disclosed by the Director or designee or a representative of the Department's Office of [Public Information] **Communications**. No other representative of the Division or the Department shall disclose information to the media or a member of the public about a child fatality or near fatality unless specifically authorized to do so by the Director or designee or the Commissioner of the Department of Children and Families.

10:33G-3.3 Procedures for the request and provision of information related to a fatality or near fatality

[(b)] (a) [The] **Representatives of the** media may request information about a child fatality or near fatality either verbally or in writing. The media **representative** shall direct the request to the Department of Children and Families' Office of [Public Information] **Communications**. [1.] The Director of the Division of [Youth and Family Services] **Child Protection and Permanency** or a representative of the Department of Children and Families' Office of [Public Information] **Communications** shall provide information verbally to a representative of the media about a child fatality or near fatality, within the parameters established by this chapter, upon confirming that the requester is a representative of the media.

[(c)] (b) A member of the public [shall make a] **may** request [for] information about a child fatality or near fatality in writing to the Office of the Director, Division of [Youth and Family Services] **Child Protection and Permanency**. If the requester claims to represent an agency, he or she shall make the request for information on official agency letterhead in accordance with N.J.A.C. 10:133G-[3.4(a)1]**2.8(a)1**. [1.] The Director or designee shall respond, in writing, within the parameters established by this chapter, to a written request from a member of the public for information about a child fatality or near fatality.

10:133G-[4.3]**3.4** Information that shall not be disclosed to the media or a member of the public about a child fatality or near fatality

(a) Pursuant to N.J.S.A. 9:6-8.10a.f, [neither a representative of the Office of the Director nor the Department's Office of Public Information shall disclose information to the media or a member

of the public about a child fatality or near fatality investigated by a child protective investigator when] **the following shall not be disclosed to the media or public in relation to a child fatality or near fatality:**

1. [The information] **Information that** would likely endanger the life, health, safety, or physical or emotional well-being of a child or the life or safety of any other person;

2. [The information may] **Information that would** compromise the integrity of or interfere with a child protection investigation, a civil or criminal investigation or a judicial proceeding. [i.] If a criminal investigation is in progress or pending, the Director of the Division of [Youth and Family Services] **Child Protection and Permanency** or designee shall contact the county prosecutor before releasing any information to the media or a member of the public about the incident, to determine what information can be disclosed, if any, based on the status of the criminal investigation;

3. [The information is] **Information** deemed confidential by Federal law or State law, other than N.J.S.A. 9:6-8.10a[, including, but not limited to, the laws referenced in N.J.A.C. 10:133G-2.3(a)1];

4. The [information includes the] name of, or any identifying information about, the reporter **of abuse or neglect that resulted in a fatality or near fatality**, even when the reporter gives written consent to disclose his or her identity in accordance with N.J.A.C. 10:133G-2.1(c);

5. The [information includes the] name of any Division representative assigned to the child protection investigation or the management of the case; [or]

6. [The information concerns] **Information concerning** any disciplinary actions taken against a Division representative as a result of or related to the incident or the handling of the case by the Division representative[.]; **or**

7. Information obtained from another agency or entity that is investigating a child fatality or near fatality on its own or in cooperation with the Division, such as the police, the county prosecutor, or the medial examiner.

(b) (No change.)

[(c) Neither the Director, the Department's Office of Public Information nor a designee shall release information obtained from another agency or entity which is investigating a child fatality or near fatality on its own or in cooperation with the Division, such as the police, the county prosecutor or the medial examiner.]

10:133G-[4.4]**3.5** Information that shall be disclosed to the media or a member of the public during the child protection investigation

(a) Unless prohibited by N.J.S.A. 9:6-8.10a or N.J.A.C. 10:133G-[4.3]**3.4**, and upon the request of the media or a member of the public in accordance with N.J.A.C. 10:133G-[4.2(b) and (c)]**3.3(a) and (b)**, information about a child fatality or near fatality that shall be disclosed **upon request to a representative of** the media or a member of the public during the child protection investigation, prior to the child protective investigator's determination of the finding, shall include and shall be limited to the following:

1. The name, age, and [gender] **sex** of the child victim;

2. (No change.)

3. The living arrangement of the child victim at the time of the incident, and, for a near fatality, the child victim's current living arrangement, if different. The Director or the Department's Office of [Public Information] **Communications** or designee shall:

i.-iii. (No change.)

4. Information about other possible child victims. The Director or the Department's Office of [Public Information] **Communications** or designee shall disclose:

i.-iii. (No change.)

5. The nature of the incident. The Director or designee or a representative of the Department's Office of [Public Information] **Communications** shall disclose:

i.-iii. (No change.)

6. [The] **To the extent it is pertinent to the abuse or neglect that led to the fatality or near fatality, information regarding the** status of the Division's involvement with the child victim and his or her family prior to the child fatality or near fatality, including:

i.-vi. (No change.)

7.-8. (No change.)

10:133G-[4.5]**3.6** Information that shall be disclosed about a child fatality or near fatality not caused by abuse or neglect

(a) The Director, the Department's Office of [Public Information] **Communications** or a designee shall disclose only the following information to the media or a member of the public, in addition to the information previously disclosed during the child protection investigation in accordance with N.J.A.C. 10:133G-[4.4]**3.5**, if the child protective investigator determines that the child fatality or near fatality was not the result of a substantiated incident of abuse or neglect:

1.-2. (No change.)

10:133G-[4.6]**3.7** Information that shall be disclosed about a child fatality or near fatality that was the result of abuse or neglect

(a) If a child protection investigation determines that the child fatality or near fatality was the result of a substantiated incident of abuse or neglect, unless prohibited by N.J.S.A. 9:6-8.10a or N.J.A.C. 10:133G-[4.3]3.4 or withheld at the request of the county prosecutor, the Director or designee or a representative of the Department's Office of [Public Information]

Communications shall disclose the following information to the media or a member of the public, as relevant to the given incident or the child's condition, in addition to the information disclosed during the child protection investigation in accordance with N.J.A.C. 10:133G-[4.4]3.5:

1. (No change.)
2. The child's current living arrangement, with this information provided under the same limitation as imposed by N.J.A.C. 10:133G-[4.4(a)3i]3.5(a)3i, ii, and iii;
3. -4. (No change.)
5. [The] **To the extent it is pertinent to the abuse or neglect that led to the fatality or near fatality, information regarding the** types of services provided by or through the Division, both prior and subsequent to the child fatality or near fatality, including service referrals given on behalf of the child victim, as well as the services or referrals given on behalf of the child victim's surviving family members, except as otherwise prohibited by law. No employee shall disclose the name of a service provider.

10:133G-3.8 Pertinence of information subject to release

(a) The Division shall determine the pertinence of information subject to release under N.J.A.C 10:133G-3.4(a)6 or 3.6(a)5 on a case by case basis. Information shall generally be

considered pertinent and subject to release in accordance with the relevant authority, if that information:

1. Relates directly to the evaluation, investigation, or service provision related to the act or acts of abuse or neglect resulting in the fatality or near fatality;

2. Relates to services or referrals offered or provided to the alleged perpetrator or child victim of the act or acts of abuse or neglect resulting in the fatality or near fatality;

3. Relates to prior or subsequent acts or alleged acts of abuse or neglect, which have a commonality of persons or conduct with the act or acts of abuse or neglect that led to the fatality or near fatality, or which may reasonably be construed as demonstrating a pattern or progression of abuse or neglect that culminated in the act or acts of abuse or neglect resulting in the fatality or near fatality; or

4. Otherwise assists the media or the public to understand the Department's awareness of and response to the circumstances resulting in the fatality or near fatality.

(b) Nothing in this section shall be construed to compel or permit the release of information not subject to release under law or any other part of this chapter.

10:133G-[4.7]3.9 Ability to seek court relief if denied information about a child fatality or near fatality

If the [Director or designee or a representative of] **Division or** the Department of Children and Families' Office of [Public Information] **Communications** denies the media or a member of the public access to information about a child fatality or near fatality under [these rules] **this chapter**, he or she may seek disclosure of the information through the Chancery Division of the Superior Court, pursuant to N.J.S.A. 9:6-8.10a.f.

(Agency Note: N.J.A.C. 10:133G-5.1 and 5.3 are proposed for recodification with amendments as N.J.A.C. 10:133G-2.7.

[SUBCHAPTER 5. RELEASE OF INFORMATION TO GOVERNMENT ENTITIES]